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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON  
PORTLAND DIVISION

FILED 02 JUL '12 17:30 USDC-ORP

**JEFFREY NATHAN LEWIS,**

**Plaintiff,**

**v.**

**FEDERAL AVIATION  
ADMINISTRATION**

**Defendant.**

**Civil Case No. 3:11-CV-1458-AC**

**DECLARATION OF  
JEFFREY LEWIS**

I, Jeffrey Lewis, declare and state as follows:

1. I am preparing this Declaration to provide the reader with background information and facts, so that he or she may better understand the civil complaint I filed against Federal Aviation Administration ("FAA") for Agency's failure to comply with the FOIA Laws. I am including true and accurate copies of selected documents as Exhibits. These were mostly obtained via related FOIA requests. All other documents supporting this Declaration are available on request.
2. By way of summary, I served as an FAA Air Traffic Controller from 1986 until 2009. I was locked out from work in February 2007, without explanation. Except for a five month unpaid Constructive Suspension, I remained in a fully paid status for all of the

next 21-months, then was fired in November 2008. I was thus stripped of my retirement rights,<sup>1</sup> and eventually forced to “voluntarily retire” to collect my retirement annuity.

3. Throughout this whole ordeal, FAA refused to communicate the facts behind their actions, which denied me any Due Process.<sup>2</sup> I made numerous inquiries, mostly with a series of letters, and they were simply ignored. Eventually, I began to remedy this problem by using the Freedom of Information Act (“FOIA”). Through persistence and careful analysis, I was able to slowly obtain FAA emails and other records, and thus was able to uncover the real facts of the case. In the process, I also uncovered substantial evidence of misconduct by numerous FAA employees.<sup>3</sup>

#### **BACKGROUND: My FAA history prior to Concord ATCT**

4. I was employed for 22-years with Defendant FAA. During my career, I was fully certified as an air traffic controller at four different towers in Oregon, Colorado and California.
5. I also worked at Oakland Center in Fremont, CA, from 2000 until 2006. I completed Oceanic training in 2002, and was fully certified to perform Oceanic ATC duties from 2002 until 2006. The Oceanic work schedule required rotating shifts, typically including one or two overnight shifts each week. This was very fatiguing, made more so by my weekly airline commute to be with my three young children in Oregon. So,

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<sup>1</sup> Due to the perceived stresses of Air Traffic Control work, Congress long ago authorized controllers to retire and collect their Federal pension at younger ages. I was thus eligible to collect the retirement pension I had earned, so long as I retired after turning age-50. When Agency fired me, I was age-49 plus six months; thus, they made me ineligible to collect my pension at age-50.

<sup>2</sup> It is exceedingly difficult to defend yourself when you do not even know the charges.

<sup>3</sup> This Declaration presents details of just a few of these misconducts, many of which were documented slanders. It is also instructive for revealing the lack of accountability within FAA.

in 2006, I withdrew from my radar training and requested to be reassigned to a tower without overnight shifts. I accepted that my reassignment would include a small paycut, and would also cause me to forfeit a sizable bonus related to lengthy delays in the radar-training program at Oakland Center.

6. On September 6, 2006, Agency imposed a new Collective Bargaining Agreement ("Whitebook CBA"). A key element of the Whitebook CBA was a new, split payscale wherein veteran controllers earned substantially more than new or demoted controllers. A lesser element was an imposed dress code. Relations between FAA management and the controllers union (NATCA), were extremely tense for the duration of the Whitebook CBA, from 2006 until a new CBA was negotiated in 2009. The very hostile relationship between FAA and NATCA is extensively documented in the public record, including via news reports and Congressional testimony. There is also extensive documentation regarding the very low employee morale during this time period.
7. I had withdrawn from radar training in June 2006. In mid-September, Agency offered me an assignment to the tower at Twin Falls, Idaho. This location was problematic for me, due to my desire to commute weekly to my children in Oregon. The Agency offer also included a 49% annual pay reduction, from \$111,385 to \$56,306. I negotiated with Agency Personnel officials, pointing out the chronic need for tower controllers in the Bay Area, where I had been fully certified prior to my promotion to Oakland Center. I was then offered a reassignment to Concord ATCT at \$91,866. I studied the pay calculation and found errors, which I pointed out. We went back and forth and my pay offer was finally set at \$101,112, a manageable and reasonable 9% pay reduction.

**I started at my new facility, Concord ATCT**

8. On October 16, 2006, I began work at my last duty station, the Airport Traffic Control Tower at Concord, CA ("Concord ATCT"). Concord ATCT is one of FAA's slowest towers. It serves primarily General Aviation single propellor aircraft, helicopters, and an occasional corporate jet. I joined six coworkers. My new supervisor (aka, Front Line Manager, or FLM) was Patricia Hardy; my new facility Manager was Neville Jason Ralph, who goes by the name "Jason Ralph".
9. During my first four months, I trained quickly, and then worked my certified positions. I certified on the Clearance Delivery, Flight Data, and Ground Control positions, at 20% of allotted time. Training for the Local Control position had not yet commenced; it was delayed, primarily due to slow traffic.

**Inexplicably locked out after just four months**

10. On February 16, 2007, Jason Ralph inexplicably locked me out. He ordered me to not call the tower, and to not come to the tower. No documentation was provided to confirm my pay status. Jason Ralph would not communicate his intentions. I remained locked out until I was fired twenty-one months later, effective November 6, 2008. For the bulk of those twenty-one months, I was in a paid administrative leave status. However, I lost more than \$40,000 in pay due to a Constructive Suspension,<sup>4</sup> from mid-April 2007 until the end of September 2007.
11. Seeking to resolve a stressful situation and wanting to get back to work, I filed my first FOIA request in July 2007. I thought it would be my last FOIA request. Instead, due

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<sup>4</sup> A Constructive Suspension is initiated by the employer, and is a situation where an employee, through no fault of their own, is involuntarily absent from work with a loss of pay. In my case, I was forced to burn off all accumulated leave, then went into a no-pay status for more than a month.

to ongoing Agency intransigence, I have since filed more than 130 additional FOIA requests and dozens of appeals, to obtain needed Agency records.

**BACKGROUND: FAA organizational structure**

12. FAA is a very large Federal Agency. Top officials have offices at the FAA Headquarters in Washington, DC. Lesser FAA officials work at FAA's nine Regional Offices, and/or at FAA's thousands of field facilities, such as at Concord ATCT.
13. The FAA organizational structure is broken down into divisions and branches, with lower officials reporting in a chain of command to higher officials. Commonly, the higher official is geographically separated from the lower official, often by hundreds or even thousands of miles.
14. The largest component in FAA is the Air Traffic Organization ("ATO"). Responsible for the safe and efficient movement of air traffic, ATO has a high public profile.
15. The ATO mission is aided by officials from the other FAA components, who provide administrative, medical, legal, security and other support.

**Key FAA officials in my FAA case**

16. In 2006, a reorganization occurred in which Air Traffic management functions were consolidated into three Service Areas. As a consequence of this reorganization, the ATO functions for AWP were relocated to the new Western Service Area ("WSA") office in Renton, WA. This required paid moves for many AWP officials, including: Barry Davis, Monique France, Vicki Hendrickson, and Gloria Ibarra.

17. Prior to this reorganization, John Clancy<sup>5</sup> was the manager in charge of the ATO function at AWP. He retired at the end of 2006. Before he retired, John Clancy signed a letter, dated December 18, 2006,<sup>6</sup> which congratulated me for twenty years of service, and included: “...*I wish to personally thank you for the dedication and professionalism you have demonstrated throughout your tenure in the agency....*”
18. Also prior to this reorganization, Tony DiBernardo was the AWP-ATO manager in charge of air traffic operations. He reported to John Clancy. When the reorganization happened, Tony DiBernardo left AWP and moved to a management job at LAX.<sup>7</sup>
19. In February 2007, when I was locked out, the chain of command was very unclear. Records obtained via FOIA have helped to determine it was as follows: my manager, Jason Ralph, reported to the San Francisco District Manager, Dennis Sullivan. Mr. Sullivan reported to the Acting WSA Terminal Operations Director in Renton, WA, Teri Bristol. Ms. Bristol was assisted by Barry Davis and Monique France.<sup>8</sup>
20. Key WSA officials involved in my case included:
  - a. Teri Bristol: WSA-Terminal Director until early 2008, when she promoted to a VP job at FAA Headquarters in Washington, DC.

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<sup>5</sup> There are so many FAA officials involved in this case that, to aid the reader in learning who's who, I will box around each person's name, where their role is first defined.

<sup>6</sup> Jason Ralph presented this congratulatory letter to me fifty days later, on February 6, 2007.

<sup>7</sup> Oddly, Tony DiBernardo was quite active in the background on my case, via emails and at various conferences. Most conspicuous was his participation on September 11, 2008. Tony DiBernardo had transferred to LAX more than two years earlier, yet Ros Marable wrote in an email: “...*I had a long conversation with Andy, Jason and Tony to ask about the Lewis grievance, the sick leave hours and an update on the Lewis response....*” I had filed a rebuttal to the removal proposal and a new grievance in late August. My older grievance (the one which triggered the removal, filed as part of the settlement and seeking \$40,000 in restored pay) was being reviewed and decided by AWP-LR. I had also filed a new Administrator's Hotline complaint, and FAA Headquarters had forwarded it to Andy Richards on September 9, 2008. So, there was plenty to cover during this “*long discussion.*”

<sup>8</sup> One puzzling aspect of this case, however, is that Jason Ralph generally bypassed Dennis Sullivan and communicated directly with Barry Davis. Thus, on my last day at Concord ATCT, the first call Jason Ralph made when I left was not to Frank Ferrera or Dennis Sullivan; it was to Barry Davis.



- b. Kathryn Vernon: WSA-Terminal Director from early 2008 until 2009, when she was promoted to ANM Regional Administrator.
  - c. Barry Davis: Senior Advisor to the WSA-Terminal Director. Handled much of the day-to-day communications and other workload. He has since promoted to be the manager at SOCAL, the largest and busiest TRACON in the world.
  - d. Dave Adams: served as an acting Senior Advisor when Kathryn Vernon was WSA-Terminal Director, during the summer of 2008. While my firing was being finalized, he substituted for Barry Davis.
  - e. Monique France: in July 2007, she was promoted to serve as Executive Staff Advisor to the WSA-Terminal Director.
  - f. Vicki Hendrickson: her job in Renton included in-processing Accountability Board cases; i.e., collecting the AB Intake Form and forwarding the data on.
21. The key ATO officials at the District level included:
- a. Dennis Sullivan: the San Francisco District Manager until August 2007.
  - b. Frank Ferrera: an assistant manager to Dennis Sullivan. He also left in 2007, returning to Santa Barbara as a Supervisor.
  - c. Andy Richards: replaced Dennis Sullivan as District Manager in August 2007. He was away in the Fall of 2008, on temporary duties at DFW, to assist in cleaning up management problems uncovered by a series of high profile Whistleblower complaints.<sup>9</sup>

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<sup>9</sup> Pressure was being applied by the Office of Special Counsel. OSC is an independent investigative and prosecutorial agency, and operates as a secure channel for disclosure of whistleblower complaints. Abundant records, including reports to the President, can be found via a Google search of "Anne Whiteman DFW OSC." Related to their investigations of the Whiteman allegations, OSC twice directed the US Secretary of Transportation to investigate, both in 2005 and in 2007. Eventually, DFW managers were relocated.

- d. Mark DePlasco: served as Acting District Manager from September through November 2008, while Andy Richards was at DFW working on the Whistleblower problem.

22. The AWP Office of Human Resource Management provides support to ATO facility managers. Disciplinary actions are coordinated through the Labor Relations Branch ("AWP-LR"), in Hawthorne, CA. The key AWP-LR personnel were:

- a. Tim Kubik: Manager at AWP-LR. In August 2008, he was promoted to Director for all Human Resources at AWP.<sup>10</sup>
- b. Cindy Lopez-Hickson: Employee Assistance Program ("EAP") Manager; she reported to Tim Kubik.
- c. Ros Marable, Dick Fossier, Glen Rotella, Dan Castrellon, Gwen Marshall, and others: all were LR Specialists, whose duties centered on assisting in disciplinary actions at field facilities, such as Concord ATCT. They all reported to Tim Kubik. Glen Rotella quit the FAA, and Dick Fossier retired, both in 2009.

23. Other key AWP personnel involved in my case included:

- a. Dr. Stephen Goodman: Regional Flight Surgeon
- b. Richard Giles: Manager for Security, Internal Investigations
- c. James Austin: FAA Special Agent; he visited Concord and conducted three days of interviews in late March 2007, then created a 93-page report.
- d. Naomi Tsuda: AWP General Counsel. She represented FAA through my MSPB Appeal process (though there never was an actual hearing).

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<sup>10</sup> This had an enormous impact on my FOIA requests. As HR Director, Tim Kubik has been responsible for redactions from dozens of FOIA responses, often concealing Terminal Reports and other records related to the AWP-LR activities he directed. Akin to appointing the fox to be in charge of henhouse vital statistics.



- e. Don Bobertz: one of Naomi Tsuda's staff attorneys. He reviewed the final draft of the removal proposal letter in early July 2008, as well as the final removal letter in October 2008. He also assisted Naomi Tsuda in the MSPB Appeal.<sup>11</sup>

**A Key Record: the bi-weekly Terminal Reports**

24. The AWP-LR office, also known numerically as AWP-16, has Labor Relations Specialists who support ATO facilities in the handling of disciplinary cases. This support includes advising field managers as well as assisting in the production and issuance of disciplinary letters.
25. The final authority for an ATO disciplinary action, involving a Terminal air traffic controller, resides in the WSA-Terminal office. Thus, there is a critical need to coordinate between AWP-LR and WSA-Terminal. This need was fulfilled with a regular report called the AWP Terminal Report.
26. The AWP Terminal Report was a spreadsheet, and was typically produced every two weeks, with less frequency during Summer and Holidays. Within the 20-pages or so, each Terminal Report had sections that summarized "Conduct & Discipline (C&D), Grievances, Unfair Labor Practices (ULP's), which are adjudicated by FLRA), Accountability Board (AB) Issues, Litigation (e.g., arbitrations and MSPB Appeals), and Watch Items."<sup>12</sup> The Terminal Reports were not only critical for coordinating disciplinary cases, but they also aided AWP-LR in managing a growing and constantly changing caseload of ATC disciplinary actions. With these objectives in mind, two

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<sup>11</sup> I filed an MSPB Appeal in late November 2008. Discovery was initiated, but FAA Counsel concealed nearly all the key records. Although a hearing was scheduled for March 4, 2009, it never actually commenced.

<sup>12</sup> ULP's are adjudicated by the Federal Labor Relations Authority (FLRA). Accountability Board is an office at FAA Headquarters that reviews sexual harassment and certain discriminatory cases.

AWP-HR employees, Tymeka Walton and Nina Dillard, were responsible for the production of these Terminal Reports. Every two weeks, they would solicit new data, collect the revisions, update the spreadsheets, and distribute the revised Terminal Reports.

27. The bi-weekly Terminal Reports were widely distributed. They typically were sent to approximately ten AWP-LR employees, and to Monique France and Barry Davis. Agency records obtained via FOIA show that at times they were also emailed directly to the WSA-Terminal Director.<sup>13</sup>
28. I first became aware of the Terminal Reports on December 3, 2009, when I received a 201-page response to FOIA 2010-0211WS. The response included emails showing the distribution of four Terminal Reports from April to early June 2008. The Terminal Reports had been fully redacted, and I was denied them on Appeal. So, I used what new records and information I had acquired and made subsequent FOIA requests. I have since received seventeen FOIA responses, four FOIA-Remand responses, and one FOIA-Appeal response related to Terminal Reports. Agency has produced some Terminal Reports in their entirety, yet continues to conceal other (key) Terminal Reports, which I have appealed.

**Slanders on the AB Intake Form, as submitted by Jason Ralph**

29. At around 10:00AM on the morning of January 21, 2007, I used the n-word. It was a one-time usage, in a non-disparaging context, quoting a Randy Newman song lyric. I

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<sup>13</sup> One critical example: the October 9, 2007 Terminal Report was sent directly to Teri Bristol.

had just gotten to work on a sunny Sunday morning. A coworker, James Swanson,<sup>14</sup> had asked me if I was likely to start my Local Control training that day. I said I hope so, but it depends on the mood of the instructor, Ken Moyer. James Swanson made a quick comment about oppression in ATC training, and compared it to fraternity hazing. I responded by saying: “*Yeah, it’s like that Randy Newman lyric, they’re keepin’ the niggers down...it is all about oppression....*” James Swanson showed no reaction, but the other coworker, John Crabtree, shot a sour look on his face as he walked past me toward the water fountain. Management heard about it and I was interrogated by Patricia Hardy on January 23<sup>rd</sup>. Then, on January 24<sup>th</sup>, Patricia Hardy collected signed statements from Ken Moyer, John Crabtree and NATCA representative Bill Marks. A fourth signed statement was collected from James Swanson on February 11<sup>th</sup>.

30. On February 6, 2007, Vicki Hendrickson disseminated an email with an attached Accountability Board (AB) Intake Form. [Exhibit-1] Her email stated that Jason Ralph had reported the alleged incident on January 29, 2007. Page two of the Intake Form alleged I had said “*Us Niggers cannot get any leave around here;*” page two also reported the names of four coworker witnesses, and had a statement that read:

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<sup>14</sup> Coworker James Swanson, who is African-American, had shared a DVD of a racial cartoon called “Boondocks” the evening before. He set up his laptop in the tower cab, while he was working very slow traffic in crummy weather. He invited me to watch and we viewed three half-hour cartoon episodes together. I reported this during the official investigation. The one follow-up question by Special Agent James Austin was to James Swanson, who confirmed he had viewed the DVD. However, in James Swanson’s testimony, he told Special Agent James Austin that he was watching it in the breakroom, that I watched for a few minutes, then he realized it was inappropriate material and turned it off. In my testimony, I had also mentioned another witness, Andrew Arnott. Special Agent Austin chose to not interview coworker Andrew Arnott for the investigation.

*“Pending additional interviews, it was a one time use of the ‘N word’ with some preceding use of ethnic slang.”<sup>15</sup>*

31. None of this is supported by any Agency records. The four specified witnesses each gave signed statements to Patricia Hardy, [Exhibit-2] and then submitted sworn statements for an official investigation in late March. Not one of those eight statements repeated any of this “*can’t get any leave*” charge. And, only three of the alleged witnesses said they observed one usage; John Crabtree and James Swanson referred to my actual use of the song lyric; and, Ken Moyer made up a new usage, which was contradicted by the James Swanson statement.
32. Furthermore, I was never notified about either my alleged ‘leave’ comment or the alleged ‘ethnic slang’. I first learned the AB Intake Form phrasing of the alleged n-word usage in late February 2009, during MSPB Discovery. But, at that time, the names of the four alleged witnesses, and the statement about this being a one-time use, were redacted and thus were not seen by me during the MSPB Appeal process. I finally learned of the four witnesses and the “one time use” comment when I received an unredacted copy of the AB Intake Form via FOIA Appeal, on March 15, 2010.
33. This was a “cherry-pick” redaction, by AWP Counsel. The AB Intake Form had three pages, and page two had all the critical information. AWP Counsel produced pages one and three, and pretended page two did not even exist. Agency’s MSPB Discovery production was 333-pages of mostly junk, and it was produced just two weeks prior to the scheduled hearing. It was September before I requested page two via FOIA. I received a redacted copy in December 2009; still no witnesses (not even a number of

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<sup>15</sup> I have no idea what is meant by this term, ‘ethnic slang’. And, everyone who has read this has asked: “what is this ethnic slang?” It was never defined or described in the ROI or any other Agency records.



witnesses), and still no comment about my alleged comment being “one-time.”

Notably, these redactions were approved by ANM Regional Administrator Kathryn Vernon,<sup>16</sup> citing FOIA Exemptions #5 and #6 (pre-decisional, and personal privacy). I appealed and finally received all content on March 8, 2010, signed by Mike Cirillo.

34. I knew nothing about the four alleged witnesses until 37-months after I was locked out, 20-months after I was fired, and 12-months after my MSPB Appeal ended. How can there be true Due Process, when an Agency knowingly conceals such basic information from the impacted individual?

### **The Violence in the Workplace teleconference (ViWP)**

35. On February 16, 2007, less than an hour after I had departed Concord ATCT on approved sick leave, a Violence in the Workplace Teleconference (ViWP)<sup>17</sup> was held. I knew nothing about this initially, but later was able to establish that it had occurred. I made a FOIA request on September 7, 2009 seeking two records, including a copy of ViWP notes compiled by Cindy Lopez-Hickson. [Exhibit-3] This FOIA request was denied in an October 15, 2009 letter signed by AWP Regional Administrator William Withycombe, citing FOIA Exemption #5. I appealed on October 19, 2009. After a four-month delay, the two pages of documents were produced.<sup>18</sup>

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<sup>16</sup> This is especially troubling because Kathryn Vernon was ultimately responsible for my firing. She was WSA Terminal Director in 2008. To do her job, she had to discuss my case many times with Andy Richards, Barry Davis, Monique France, Mark DePlasco and others.

<sup>17</sup> A ViWP is a formal process. Numerous officials participate via teleconference. They hear the concerns and allegations, as presented by the manager (in this case, Jason Ralph). They then coordinate efforts to ensure a thorough and appropriate response. Participants in this ViWP included: the AWP Counsel (Monroe Balton), the AWP Regional Flight Surgeon (Dr. Stephen Goodman), the AWP Employee Assistance Program manager (Cindy Lopez-Hickson), an AWP HR employee (Dick Fossier), two AWP Security officials (Richard Giles and Bobby White), and the WSA-Terminal office in Renton (represented by Barry Davis).

<sup>18</sup> Agency concealed the ViWP teleconference notes for 37-months. Included within this one-page was a statement that I had banged and kicked the door, and “...*actually hit a fellow employee in the chest....*” After I had established the existence of this record and made a FOIA request, Agency withheld this record, claiming it was “pre-decisional.” Tim Kubik was the AWP official responsible for this redaction. It was finally obtained via a FOIA Appeal, received on March 15, 2010. The Appeal response was signed by Mike Cirillo for Paula Lewis.

36. At 3:56PM on February 20, 2007, Jason Ralph sent an email to Teri Bristol, Dennis Sullivan, Gwen Marshall, Frank Ferrera, and Barry Davis.<sup>19</sup> [Exhibit-4] The subject line was: “Jeffrey Lewis Update,” and within the text it said, “*Barry, thanks again for your prompt actions last Friday ... reference your request for some history....*” It is a full-page, slanderous “chronology” of my career, as defined by Jason Ralph. It presents a new and shocking charge: Jason alleges that on February 6<sup>th</sup>, I “*...returned to the office, lunged at the supervisor and attempted to bully her into returning the notification (I) had just signed....*” Here he has me all but attacking a female supervisor yet, just four days earlier, when speaking at a Violence in the Workplace telecon, he made no mention of this lunge.<sup>20</sup>
37. One hour after Jason Ralph’s slanderous chronology, Teri Bristol sent a 4:56PM email reply to Jason Ralph. [Exhibit-5] It said: “*Jason – thanks for your continued management support regarding this issue. Please let us know if there is anything additional we can do to support you.*” This email was cc’d to Barry Davis and Dennis Sullivan.
38. As further evidence against the “lunge” charge, Jason Ralph was also interviewed by another FAA Security Agent, Sarita Burr. On February 20, 2007, she produced a “Detailed Incident Report.” [Exhibit-6] She had interviewed Jason Ralph and compiled the details for this report, which made no mention of a lunge. In fact, it went further, and stated: “*At the request of the Subject’s Controller-in-Charge (CIC),*

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<sup>19</sup> Although this email should have been shared with all other ViWP participants, Barry Davis was the only ViWP recipient of this email. Oddly, Jason Ralph sent it to others who knew nothing about what he had said (and did not say) at the ViWP. This pattern of Jason Ralph’s manipulating the flow of information appears repeatedly within the FAA emails obtained via FOIA.

<sup>20</sup> I knew nothing about the lunge charge until I read about it in the ROI, in October 2007. Furthermore, FAA pay records prove that, although I allegedly lunged at the end of my workweek on Tuesday 2/6/07, I came back and worked more than forty hours the next week. Simply, the lunge charge did not exist until this email.



*2/6/2007, the Subject signed a document informing him that an Accountability Board investigation had been opened. The subject is alleged to have used the word 'nigger' on two different occasions while on duty in the air traffic cab..."* Not only is there no mention of a lunge, but Jason Ralph had reported to Agent Sarita Burr that it was *A COWORKER* (not Supervisor Patricia Hardy) who gave me the form to sign.<sup>21</sup>

### **The Report of Investigation (ROI)**

39. On March 28, 2007, the 93-page Report of Investigation ("ROI")<sup>22</sup> was completed and distributed to WSA-Terminal, AWP-LR, and Dr. Stephen Goodman. I made numerous requests, but was not provided a copy. I filed a FOIA request in August and finally received a copy on October 10, 2010.
40. The ROI was an extensive project. FAA Special Agent James Austin, a retired police officer now working as an FAA investigator, flew up from LA for three days of interviews in late March. We all had to sign papers warning we could be fired for lying. I was interviewed last. I was asked no questions about the lunge (thus, I knew nothing about that charge until October). My interview ran three hours.

### **The Constructive Suspension**

41. On April 24, 2007, I received an email from Jason Ralph advising that I was now being forced to use up my leave to collect pay. It was effective the week earlier, on April 17<sup>th</sup>. This was the start of the Constructive Suspension. By mid-August, I had

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<sup>21</sup> Note, also, that as of 2/20/07, four days after I was locked out, a formal investigative report is now declaring "two" usages of the n-word. Signed witness statements had been collected from four coworkers (on January 24<sup>th</sup> and February 11<sup>th</sup>). The only n-word usage identified in those four signed statements was my song lyric quote.

<sup>22</sup> Although this ROI was filled with errors and contradictions, and the charges were never substantiated, the ROI was nonetheless used nineteen-months later as the sole documentation to "justify" the firing of a 22-year air traffic controller with no conduct history. Furthermore, the same ROI had already been used, in July 2007, to justify a letter sent by District Manager Dennis Sullivan, admonishing me for the alleged misconducts.

used up all of my saved leave. I thus went into a Leave-without-Pay status until the end of September. The Constructive Suspension lasted more than five months.

42. In late May 2007, after receiving my first paystub showing the Constructive Suspension had begun, I filed my first grievance. The grievance sought payment on the 72-hours of sick leave I was forced to use, from April 17 through April 28, 2007.
43. Throughout May, I had been communicating with two AWP NATCA officials: Dave Caldwell and Mike Hull. They had clearly threatened that, if I chose to file a grievance under the imposed Contract (Whitebook CBA), they would withdraw my grievance. After I filed, Dave Caldwell sent two signed letters to Jason Ralph. His May 31, 2007 letter included: *"...upon your reply to Mr. Lewis, the Union will take ownership of the grievance and will be withdrawing said grievance with prejudice. I am requesting that you notify me when you have responded to Mr. Lewis' illegal grievance...."* His June 22, 2007 letter included: *"...as I had informed you earlier the union cannot, and will not, support any grievance filed under the whitebook. Therefore...I am hereby withdrawing grievance...."* [Exhibit-7] The Union never notified me that they had withdrawn my grievance. In fact, I learned about it in late September 2007, during a phone conversation with Dick Fossier.
44. On June 21, 2007, my ATC medical clearance was permanently revoked by Dr. Stephen Goodman. In the coming weeks I learned that I was supposed to submit papers for a disability retirement. Instead, I challenged the decision, and eventually prevailed (see January 10, 2008).
45. By late June, I had received the letter from Dr. Stephen Goodman, revoking my ATC medical clearance. I was still getting no information from Jason Ralph and others in

ATO and AWP-LR. So, I filed my first FOIA request, seeking copies from the file for the Hotline complaint I learned had been filed against me on February 7, 2007.

**A breach of medical records confidentiality**

46. On July 6, 2007 Dr. Stephen Goodman sent an email to Dick Fossier. [Exhibit-8] It said: *"The subject has acknowledged his medical disqualification. He has requested information from AWP-300<sup>23</sup> that we have not responded to. His file is on my desk if you need to see it. I will be out of the office from 7/9 thru 7/12."*
47. On July 8, 2007, Dick Fossier forwarded this email to Dennis Sullivan, Barry Davis and Jason Ralph. This was an invitation to pore through the confidential medical file of an employee who had just been permanently medically disqualified.
48. And, what was in that medical file? I soon found out. I needed information, to find out why Dr. Goodman had taken away my medical certificate. So, I asked him for a copy of my entire medical file. I knew that I had a very clean medical record. But, I did not know what damaging misinformation might have been added.
49. In late July, I receive a copy of my ATC medical file. Sure enough, just a couple pages in from the front, there was a note, from one doctor to another. It was extremely slanderous, and dated June 7, 2007. [Exhibit-9] It stated that I had demonstrated inappropriate behavior for seventeen years, been transferred to seven different facilities, and shown no improvement. There was absolutely nothing in my medical file to support any of this. It was absolutely shocking to see.

**A Letter of Admonishment, signed by Dennis Sullivan**

50. On July 31, 2007, I received a letter of admonishment signed by Dennis Sullivan. [Exhibit-10] It stated that it was determined I had used the n-word on at least two

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<sup>23</sup> AWP-300 is the numeric identification for the AWP Regional Flight Surgeon's office.

occasions.<sup>24</sup> There was no mention of the lunge or any other misconducts. I had always assumed that a Letter of Admonishment was the appropriate discipline for what I had done. I later learned that both Gwen Marshall and Dick Fossier had sent emails also advocating for a Letter of Admonishment. The email by Gwen Marshall, sent in June 2007, asked Dick: “...*I forgot to ask, was Mr. Lewis getting some sort of discipline, e.g., a written admonishment for his n-word usage?*” [Exhibit-11] On July 14<sup>th</sup>, Dick Fossier emailed six people (including Jason Ralph and Barry Davis) with a lengthy email saying I should be “...*counseled, admonished and/or reprimanded re his behavior and the use of the n-word....*” [see Plaintiff’s Memorandum Defining His Complaint, and Requesting an Amendment to Add FOIA 2011-9148 (“Plaintiff’s Memo”), pg.2 of Ex. 10.]

51. On September 5, 2007, Dick Fossier sent an email to Richard Giles, Barry Davis, Monique France, Jason Ralph and Andy Richards.<sup>25</sup> [Exhibit-12] It stated that “...*Jeffrey Lewis was admonished for his use of the ‘racially offensive slurs.’ On the basis of this, we (HR and LOB)*<sup>26</sup> *closed the Accountability Board case. Based on this, I would say it is OK to provide Lewis a copy of his redacted ROI....*”
52. On October 4, 2007, I sent an email<sup>27</sup> to Andy Richards rejecting his offer of a disability retirement. [see Plaintiff’s Memo, Ex. 2.] Within this email, I also asked Andy Richards to confirm that FAA legal counsel was aware of the details of my odd pay status. No confirmation was ever provided.

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<sup>24</sup> As previously noted, a thorough review of the ROI shows only one n-word usage was ever substantiated, and that is the one usage I always admitted to: quoting a song lyric, non-disparagingly.

<sup>25</sup> Andy was the new District Manager, having replaced Dennis Sullivan in August.

<sup>26</sup> “HR and LOB” refers to AWP-LR and WSA-Terminal, respectively.

<sup>27</sup> Agency concealed this email from both FOIA and MSPB Discovery. I obtained proof that Andy Richards had this email to share on 4/25/11, via FOIA 2011-0319 (2,528-pgs).

**I received a copy of the ROI, six months after ATO Managers**

53. On October 10, 2007, I received a FOIA copy of the 93-page ROI, which had been completed on March 28, 2007. I was stunned to see it was such a large report, and even more stunned to learn the allegations that were never shared: lunging, kicking, banging, three separate n-word uses. It was very difficult to read, and there was no analysis to identify contradictions or substantiations. Consequently, it is extremely unlikely that anyone but the ROI subject would actually spend the dozens, even hundreds, of hours needed to fully assess what was true and what was garbage. Frankly, to me, the whole document looked like garbage. I concluded they delayed so long in sending it to me because they were embarrassed.
54. At the front of the ROI, an FAA Form 1600-32 presents allegations. [Exhibit-13] It reads: *"Accountability Board Cases 20070097 and 20070098 allege Lewis stated in the workplace 'Us niggers can't get any leave' on January 21, 2007. On February 16, 2007 when Lewis's manager presented him a discipline letter him in regards to this incident he became very agitated and began kicking his supervisor's door. It is alleged that his fellow employees are in fear of their safety."* Two important facts are: 1) none of these allegations are supported anywhere within the ROI or using any other FAA records; and 2) although Agency emails show the investigation content was still being decided as late as March 8<sup>th</sup>, the most serious charge (the alleged lunge of February 6<sup>th</sup>) was never listed.



55. In November 2007, I filed an Unfair Labor Practice (“ULP”). [Exhibit-14] My ULP<sup>28</sup> charged that FAA had failed to negotiate in good faith, in what appeared to be a collusion with the union, NATCA.

**A plan to reassign me to Santa Rosa ATCT**

56. On December 3, 2007, Barry Davis sent an email<sup>29</sup> to WSA-Terminal Director Teri Bristol. Regarding my case, he wrote: “...*Andy wants to propose discipline for the previous conduct issue that led to this, and to send him over to Santa Rosa ATCT. I told Andy that we may have an issue with the timeliness.*” [Exhibit-15] This email also was concealed. I first received it on July 22, 2010, seventeen months too late to help with the MSPB Appeal process. This was a clear obstruction of my Due Process rights, not only within the MSPB process, but also within the FOIA process.
57. On January 10, 2008, my ATC medical clearance was fully restored by Dr. Stephen Goodman. [see Plaintiff’s Memo, Ex. 3.] I expected a call any day from Andy Richards, to return to work. The call never came.

**More Fossier slander: “slimeball” and “never certified”**

58. On April 5, 2008, Labor Relations Specialist Dick Fossier sent an email<sup>30</sup> to his coworker, Ros Marable, with a subject line: “SFO Hot Issues.” Ros Marable was taking over the case, which Dick Fossier had handled since early 2007.<sup>31</sup> Within this

<sup>28</sup> ULP’s are the formal complaints processed by the Federal Labor Relations Authority (FLRA).

<sup>29</sup> The email was cc’d to Monique France. Subject line was “Discussion with Ham,” implying he was briefing Teri Bristol for a meeting with the NATCA Regional VP, Hamid Ghaffari. The email indicated Andy Richards wanted to reassign me to work at the tower in Santa Rosa. A past coworker of mine, from the early 1990’s in Salem, OR, was the Santa Rosa manager at the time, and he knew my true character.

<sup>30</sup> This email was concealed, and I obtained a partially redacted copy on 11/5/11, via FOIA 2011-9148 (2-pgs). Two more sentences were revealed with an Appeal copy, received on 2/5/12. Approximately two lines remain redacted, citing FOIA Exemption #5, and have been delivered for in camera review.

<sup>31</sup> Of course, I had no idea this was going on. I had been admonished in July, was provided the ROI in October, and my ATC medical clearance was restored in January. I solidly believed we were done, and I was just waiting to get back to work.



email, Dick Fossier stated that he had failed to complete processing of my disciplinary action. Dick Fossier was providing Ros Marable with background information so that she could complete the process. Many of Dick Fossier's "facts" were actually grossly damaging misrepresentations. He claimed that I had been AWOL.<sup>32</sup> Also in this email, Dick Fossier stated: "*This 'Slime Ball' has been with the Agency for 20 plus years and has never certified<sup>33</sup> at a facility.*" These very substantial slanders were not revealed to me until November 2011, and two key lines remain improperly redacted.

**On 4/17/08, LR Specialist Rotella finalized a ULP Settlement**

59. In early April 2008, Labor Relations Specialist Glen Rotella telephoned me. He was tasked with resolving the ULP I had filed in November 2007, and he offered to settle. His offer was to pay me for the 72-hours of sick leave if I would withdraw the ULP. I said I was agreeable to that, but noted that I needed documentation confirming my pay and work status, as I had none and it had been fourteen months since the lockout began. I also noted that I needed a waiver of timeliness, so that I could file a new grievance regarding the Constructive Suspension months. His response, quite clearly, was that he would draft those terms into the settlement so that I could be "*made whole*".
60. Glen Rotella drafted up the settlement as discussed. In an email sent at 10:16AM on April 17, 2008, he provided District Manager Andy Richards with a draft of the proposed settlement. A line in his email read: "*...Item #2 requires that you provide Mr. Lewis a letter explaining his current employment status...if a decision has been*

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<sup>32</sup> I was *never* AWOL in my entire 22-year FAA ATC career. And AWOL is a *very* damaging label in Federal service.

<sup>33</sup> I was fully certified for most of my FAA career, and at four different FAA towers.

*made of when he is to return to work or what he may expect next, that would be good to add...."*

61. In response to this, Andy Richards mailed me a certified letter which stated: *"This letter is to confirm that you are on administrative leave pending further notice. A return to work plan will be discussed with you at a later date."*<sup>34</sup> No discussion followed. Instead, less than three weeks later, a new removal proposal was drafted.

**Also on 4/17/08, LR Specialist Marable drafted a 14-Day Suspension**

62. Agency records produced via FOIA have revealed that, at 2:39PM on April 17, 2008, Ros Marable emailed District Manager Andy Richards with a draft letter proposing to suspend me for 14-days.<sup>35</sup> Her email message stated: *"This is only a draft in progress and I wanted your thoughts so far. ... I would like to discuss this further, since I have a few questions regarding the sequence. Please give me a call."* She sent this 5-page draft again on April 28, 2008.
63. Despite my many FOIA requests, I knew nothing about this 14-day suspension draft for years. The first reference to it was obtained in a FOIA response received on July 14, 2010; this was a line within a Terminal Report that read: *"...previously drafted a 14-day...."* It was another nine months before I actually saw a draft of the 14-day suspension in another FOIA response, received on April 25, 2011.<sup>36</sup>

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<sup>34</sup> The return-to-work plan is very consistent with the action Andy Richards was contemplating earlier, in December 2007. See the December 3<sup>rd</sup> email from Barry Davis to Teri Bristol at **Exhibit-15**.

<sup>35</sup> This suspension was another activity I knew nothing about. As noted earlier, I thought we were done and I was returning to work soon. Especially when I received Andy Richards' "return to work plan" letter.

<sup>36</sup> Thus, I learned of the suspension 27-month later, and confirmed the suspension 36-months later.

**I filed a new grievance, and the Suspension became a Removal**

64. On May 1, 2008, I mailed the signed ULP Settlement to Glen Rotella. In the same envelope, I included my new grievance seeking payment for the \$40,000 in pay lost during the summer 2007 Constructive Suspension.
65. At 1:33PM on May 7, 2008, Glen Rotella sent an email to Andy Richards, Jason Ralph and Patricia Hardy. His email had PDF copies of my ULP settlement, including the new grievance. Just seven-minutes later, Andy Richards replied with an email that asked Glen Rotella to clarify the dates to be reimbursed. Andy Richards said he could easily fix the pay issue, then added “...*how should I respond to the grievance?*” An hour later, Glen Rotella’s reply included: “...*as for the response to the grievance--- His main issue seems to be that he was ordered to take a medical evaluation, under the threat of discipline, and the FAA should pay for it under article 66. I have been told that he was not ordered to get a medical evaluation but did so on his own. I have not seen any medical documentation ordering his evaluation. Therefore, he would not qualify for reimbursement. However, he points to several letters from Jason, which I have not seen, that orders the required exam. A review of these documents and accounts from Jason should be done in order for a proper response to be put together. Let me know if you need me to get any information....*”

**First evidence of the retaliatory removal**

66. The next Terminal Report (and associated teleconference) was scheduled for Tuesday, May 20<sup>th</sup>. Ros Marable was to be gone for a long weekend so, in advance of her planned absence, she emailed her Terminal Report updates to Tymeka Walton at

12:39PM on May 15, 2008.<sup>37</sup> Her updates included an entry about my case that read:

*"...previously drafted a 14-day, management now requests a removal....still drafting removal and waiting for manager to complete douglas factors..."* And where was I while all this was happening? At home in Oregon; I had not been to Concord ATCT since February 16<sup>th</sup> of 2007!

67. Three hours later, at 3:38PM on May 15<sup>th</sup>, Ros Marable emailed Andy Richards, reading as follows: *"Andy, So you are aware, thoroughly reviewed the ROI and have added to the Lewis letter based on the ROI."*<sup>38</sup> *The second charge will have at least 6-7 specifications regarding not being truthful. I want to review the letter again before I send it to you on Tuesday. I will be on leave on Monday, but if I have the opportunity to finish on Monday, I will send it to you then. Tomorrow is my RDO but we have family plans and we will be out of town until Monday. I can add your douglas factors*<sup>39</sup> *to this letter."*

68. Tymeeka Walton issued the new Terminal Report<sup>40</sup> via an email sent at 8:47AM on May 20<sup>th</sup>. Later that day, in an email sent at 1:16PM on May 20<sup>th</sup>, Ros Marable provided Andy Richards with the first draft, a 6-page document proposing my

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<sup>37</sup> This was the first Terminal Report to list my case on the "Conduct & Discipline" sheets. Despite my many FOIA requests, Agency has produced no Terminal Reports indicating any official handling of my case from February 2007 until mid-May 2008. These Terminal Reports are known to exist, but Agency has simply chosen to withhold them, and pretends they do not exist.

<sup>38</sup> At this point, the cart had been positioned squarely before the horse. Ros Marable had the task of dredging up whatever 'new' information she could find (in a 14-month-old ROI) to justify the 'management' decision to fire an employee. And nobody was accountable for anything.

<sup>39</sup> Richards never did submit Douglas Factors. These were finally submitted nearly five months after the letter was begun, when Acting District Manager Mark DePlasco provided Douglas Factors via a 10/6/08 email. His response to Factor #12 (which asks what lesser sanctions were considered, and why the removal sanction was not mitigated), was: *"Mr. Lewis was asked to consider a medical retirement but he refused"*. Ros Marable asked him to replace this with a better answer. On 10/8/08, he emailed Ros Marable; his new answer dropped the medical reference and read *"...because Mr. Lewis accepts no responsibility for his actions and is not truthful."*

<sup>40</sup> Finished Terminal Reports were routinely emailed to Monique France and Barry Davis at WSA-Terminal. The distribution also included a list of ten AWP-LR employees (Castrellon, Dillard, Fossier, Gray, Harris, Hicks-Moffatt, Marable, Marshall, Nurse and Rotella).



removal. The text in her email read: *"Andy, See attached. Please review and make the changes you feel are needed. Also, please send me your douglas factors, so I can complete this letter. I have added a few of the DF's, but I need your input. Thanks, Ros."*

**Revisions to the removal proposal letter**

69. In an email sent at 1:42PM on June 5<sup>th</sup>, Ros Marable informed Andy Richards:
 

*"...based on our discussion and your review of the removal for Lewis I made a few changes to the letter. However, I am still waiting for your Douglas Factors to complete the Letter. Could you please let me know approximately when you will be able to send that to me, so I can send you the final draft before I send it to Legal and the LOB for review and grid off. And so you are aware I have one week annual leave coming up for June 16<sup>th</sup> – June 23<sup>rd</sup> and will return to the office on the 24<sup>th</sup>..."*
70. At 9:43AM on June 11<sup>th</sup>, Ros Marable sent an email to Jason Ralph, with cc's to Andy Richards and Glen Rotella. It said: *"Jason, It is my understanding that you are filling in for Andy until June 23<sup>rd</sup>. I have attached the final draft for Lewis for your review. I need the employee's address on the letter. Please call me to discuss if you have any questions or changes. Otherwise after I receive your response, I will send the letter to legal and the line of business for their review and approval. Could you also send the Castle records? We need to have documents that reflect that Mr. Lewis was carried on administrative leave during the entire time he was placed out. Thanks, Ros."*
71. At 9:37AM on June 20<sup>th</sup>, Jason Ralph sent an email to Ros Marable, with a cc to Andy Richards. It said: *"Ros, I made some clarification and correction to the background information for February 13 and 16, 2008, added Mr. Lewis address and*

*Andy's signature line. Please review, edit as needed and return for Andy's signature and issuance to Mr. Lewis, as soon as possible." (sic)*

**Final review of removal proposal letter**

72. At 9:37AM on June 24<sup>th</sup>, Ros Marable sent an email to Jason Ralph, with a cc to Andy Richards, which said: *"The letter will be sent for review to the LOB and legal. I will send the letter back to you for issuance after I receive their approval. Thanks, Ros."*
73. At 9:42AM on June 24<sup>th</sup>, Ros Marable sent an email to her coworker, Joe Harris, which said: *"Joe, the ROI for this letter should be in a rubber-banded file for Lewis. Could you attach a grid and send the letter and ROI to legal for review. I will send the letter to the LOB for their review. Thanks, Ros."* Ros Marable sent yet another email at 9:47AM, to Monique France (with a cc to Barry Davis), which said: *"Monique, See attached letter for your review. If you have any questions prior to my return please call my cell phone at ... I will return next Monday and I will check my email messages...."* On the next Monday, June 30<sup>th</sup>, Monique France emailed Ros Marable (with a cc to Barry Davis) saying, *"...Western Terminal concurs...."*
74. At 12:47PM on July 4<sup>th</sup>, Lierre Green sent an email to Ros Marable, which said: *"Hey Roz, I will be out for two weeks, but wanted to finish this letter. Please check to make sure the conversations happened when we say they did. For instance, Lewis was told to leave five times on Feb. 16, 2007, not the thirteenth, as we allege in the last paragraph on page 1, and specification 4 on page 2. I wrote it on the document and then realized you probably would not have been able to read it. I left the file in my outbox. Once finished you can have Naomi sign it, or Mr. Bobertz who is in the next*



*office to me.*” Ros Marable did engage Don Bobertz in the review of her final draft removal proposal letter.

**The removal proposal letter is delivered**

75. At approximately 11:00AM on July 16, 2008, a FedEx truck left an overnighted letter on my front porch. The letter, signed by Andy Richards, was a proposal to fire me.

[Exhibit-16] At the time I read this letter, I had been locked out for seventeen months, mostly in a paid status. I had been waiting three months for Andy Richards to follow through and discuss a *“return to work plan.”* This removal proposal came as a complete surprise.

76. At 10:14AM on July 17, 2008, Glen Rotella sent an email to two NATCA AWP officials, Ham Ghaffari and Mike Hull. [Exhibit-17] It included: *“I know there are some understandable differences between you guys however, if ever there were someone in need of representation and your professional advice it is Mr. Lewis. He has been on admin. leave for way over a year with almost no communication from the Agency. Now he receives a proposed removal based on stuff that occurred more than a year and a half ago....”* The one FAA management official who was strong enough to speak up had to go to the union to try to fix it. And the union did nothing.

**My attempts to open communications; some Agency non-responses**

77. I was facing a deadline to rebut (and hopefully stop) the removal proposal. So, I spent weeks intensively seeking information. At 11:15PM on August 3<sup>rd</sup>, I emailed Andy Richards. [Exhibit-18] This was an early attempt to open communications. I noted serious contradictions within the ROI, and asked a few questions; he did not reply.

However, he did forward the email on to Ros Marable, at 12:29PM on August 4, 2008.<sup>41</sup> [Exhibit-19]

78. At 5:22PM on Thursday, August 7<sup>th</sup>, I emailed Andy Richards. [Exhibit-20] I asked if he could locate an email from September 5<sup>th</sup> 2007, which declared that I had been admonished. I also asked if he had sent this email. Three minutes later, he emailed back from his blackberry, advising he needed to search in the office and would do so on Monday morning, then reply. [Exhibit-21]

79. At 10:24PM on August 7<sup>th</sup> I sent a lengthy email to Andy Richards. [Exhibit-22] I carefully explained the need for us to ensure good, open communications. I attached three pages of notes showing communications related to my case for September and early October 2007. I asked if Andy Richards could likewise share his communications notes. I was hopeful that reason might prevail, and the removal proposal would then be abandoned. Andy Richards emailed a one-word reply at 8:17AM the next morning: "Yes." [Exhibit-23]

80. I heard nothing back so, at 1:11PM on August 11<sup>th</sup>, I sent an email to Andy Richards. [Exhibit-24] He emailed a reply at 2:06PM, which included: "*Jeff, I do not have a copy of the email from 9/5/2007 in my archives. Sorry....*"<sup>42</sup> [Exhibit-25] He also set August 24<sup>th</sup> as my deadline for rebutting the removal proposal.

81. At 2:26PM on August 11<sup>th</sup>, I emailed Andy Richards with: "*Andy, No copy, huh? OK. Then how about three simple questions... 'Who sent Mr. Giles that email saying I had*

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<sup>41</sup> That Andy Richards shared this email with Ros Marable was learned when I received a 2,528-page FOIA response, on 4/25/2011. This particular FOIA consisted of archived emails to/from Andy Richards.

<sup>42</sup> This statement was false, as proven with receipt of the FOIA response on 4/25/2011. The 2,528-pages produced for that FOIA were the archived emails saved at the close of business on 10/13/2008. Thus, Andy Richards declared on 8/14/2008 that he did not have a 9/5/2007 email, yet two months later that email was saved during a routine archiving process. For the record, during the MSPB process, Agency Counsel never produced the 9/5/2007 admonishment email; in fact, they never even acknowledged its existence.

*been admonished?’ ‘What do you recall was said in it?’ ‘How can I obtain a copy at least a few days prior to your 15-day deadline?’ Jeff’ [Exhibit-26]* Andy Richards never replied.

82. I had a phone conversation with Andy Richards at 2:52PM on August 14<sup>th</sup>. Per my question, he advised his boss was Kathryn Vernon, and gave me a phone number. I then called Kathryn Vernon at 3:03PM and left a voicemail message. I compiled brief notes for both calls. [Exhibit-27] Neither Andy Richards nor Kathryn Vernon ever followed up.

**Both Kathryn Vernon & Ros Marable were in the loop**

83. At 3:08PM on August 14, 2008, Andy Richards sent an email to Kathryn Vernon, Monique France and Dave Adams. [Exhibit-28] It said: *“Here’s the proposed removal that we issued the employee. I will give you and Dave the details in DC. He will probably be calling you shortly. Thanks. Andy”* Eight-minutes later, Dave Adams emailed a reply that simply said: *“Wow!”* Dave was substituting for Barry Davis, as the acting Senior Advisor to Kathryn Vernon.
84. Andy Richards sent two emails to Ros Marable at 8:58AM on August 15, 2008. The first was a forwarded copy of my email sent to Andy Richards at 6:09PM on August 14<sup>th</sup>. [Exhibit-29] The second was a forwarded copy of the email I sent to Andy Richards at 6:16PM on August 14<sup>th</sup>. [Exhibit-30] I had included numerous questions and some analysis of how flawed the ROI was. Andy never replied to me.

**My rebuttal to the removal proposal**

85. On August 22, 2008, I barely made the deadline in submitting a letter rebutting the removal proposal. I included a 3-page cover letter, a 22-page rebuttal, and 10-pages of

exhibits. I had to spend well over a hundred hours intensively researching the ROI and the few other documents I had, to help Agency officials see that the ROI was never substantiated and was filled with material contradictions.

**Finalizing the removal; cleaning up some loose ends**

86. At 9:22AM on September 15, 2008, Ros Marable sent an email to Dan Castellon, with a cc to Glen Rotella. It said: *"On Thursday morning, (while I was sick), I had a long conversation with Andy, Jason and Tony<sup>43</sup> to ask about the Lewis grievance, the sick leave hours and an update on the Lewis response. Everyone stated that the hours for Lewis had been completed<sup>44</sup> and they were going to fax over time and attendance to Glen as verification. Also they were going to send in the grievance for a number<sup>45</sup> and assistance. Thanks, Ros."*

87. At 9:23AM on September 22, 2008, Ros Marable sent an email to Dan Castellon. [Exhibit-31] It said: *"Dan, after a review of the attachments below, I don't see the changes or amendment for the 72-hour settlement agreement. Also I still do not see any time credit for pay periods 8-9. Tell me what I am missing? Ros"* Dan Castellon ignored these concerns, and proceeded to draft and issue the Step-3 denial of the grievance I had filed on May 1<sup>st</sup>.

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<sup>43</sup> This would be Tony DiBernardo. His work in the older AWP Air Traffic office had ended in August 2006, when that position was transferred to the new WSA-Terminal office in Renton, WA. Now, here he was more than two years later, engaged in a long discussion about how to clean up (and fire) a very messy case. The appropriate participant should have been Kathryn Vernon.

<sup>44</sup> Agency records show that the 72-hours of restored leave were not done until April and June of 2009.

<sup>45</sup> This is yet one more example of bad faith in the handling of my case. I mailed this new grievance on 8/23/08 and Agency should easily have assigned a number before September. I mailed it to the tower offices at SFO, and it was delayed. My new grievance called for the removal of the one memo within the ROI that claimed I had lunged. This memo was a record of conversation between Patricia Hardy and me, was dated 2/20/07 (for a 2/6/07 alleged lunge), and had never been shared with me. The Whitebook CBA required timely disclosure of records of conversation. The threat of my removal made it absolutely critical that this new grievance not be delayed. Yet it was. And then, at the last minute, just before I received the removal decision letter on Halloween 2008, Dan Castellon simply (and speciously) denied the grievance. Dan Castellon blatantly abused his authority; had I not been so busy dealing with the removal, I would have elevated this grievance.



88. On September 25, 2008, Dan Castrellon sent a letter to NATCA AWP VP Ham Ghaffari, denying my grievance at Step-3. [Exhibit-32] A portion of the letter read: “...it must be noted that pursuant to a prior Settlement Agreement, corrections were made to the grievant’s leave status and 72.00 hours of Sick Leave was amended to reflect Administrative Leave in PP20-2007 (September 4-14, 2007). Based on the above, the grievant has been correctly charge and placed in the appropriate leave status.” This was false and Dan Castrellon had just been alerted by Ros Marable that there was no evidence of any corrections. The actual corrections were initiated in April 2009 and were not completed until June 2009.
89. At 8:54AM on October 3, 2008, Glen Rotella sent an email to Dan Castrellon and Tim Kubik, with a cc to Dick Fossier. It said: “Dick and I have received several calls and emails requesting information, email addresses, telephone numbers for the two of you. Mr. Lewis has filed another grievance in which he is claiming no response from the agency. He has now contacted the FLRA and told them we are ignoring time lines and refusing to follow the grievance procedure with his grievances. I have settled an earlier ULP on the same subject and will not be so lucky the next time. With all the delays in the second grievance response we should be pushing for a quicker turnaround on this latest grievance.”<sup>46</sup> Any help in getting a response to Mr. Lewis would go a long way in protecting the Agency from an unwinnable ULP. Also need to

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<sup>46</sup> Although this appears confusing, Glen Rotella has it exactly right. He refers to three grievances. First was my May 2007 grievance, which was denied then withdrawn by NATCA, and became the heart of my ULP. Glen had settled that ULP with me, and I submitted grievance #2 on 5/1/08 seeking to be made whole for the \$40K in lost pay. Agency was delaying on that. Now, the third grievance was what I had filed on 8/23/08; forty days later, I had not even been sent an acknowledgment.

*know how to reply to his request for your contact information. It is hard to start from yes<sup>47</sup> when you are saying no!"*

**Secretly changing my pay record, 600-days later**

90. On October 6, 2008, Jason Ralph emailed Dan Castrellon, Mark DePlasco and others, reporting "*Approval Completed*" on a pay amendment. This was an amendment to my pay record for the day I was locked out, February 16<sup>th</sup> 2007. It changed eight hours of approved sick leave to eight hours of paid administrative leave. It meant that Agency paid me to be away that day; thus, it generated a payment, which I saw in a November paycheck, reimbursing me for eight hours of sick leave.
91. Here's the background on this pay amendment. On February 16, 2007, I departed Concord ATCT on approved sick leave. The Agency pay record confirms this sick leave. A problem, though, was that in numerous Agency official reports, including the ROI and the DIR,<sup>48</sup> Jason Ralph had testified that he had ***ordered*** me to depart. The ROI was the sole document used to justify my removal.<sup>49</sup> The ROI was erroneous, and the appropriate action would have been to correct the error. Instead, Agency's solution was to amend the pay record to conform with the erroneous document. Jason Ralph had promoted to SFO seven months after I was locked out, so Patricia Hardy was the acting Manager at Concord ATCT. At 2:17PM on September 25, 2008, she sent an

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<sup>47</sup> Here, Glen Rotella is referring to a quote commonly attached to the bottom of AWP-LR emails, which enthusiastically reads: "***Starting from Yes!***"

<sup>48</sup> Detailed Incident Report. Completed 2/20/07, by FAA Special Agent Sarita Burr. Title was "Violence in the Workplace." Agent Burr interviewed Jason Ralph, who made numerous statements contradicting his ROI sworn testimony. The DIR was NOT included (though it should have been) as an ROI Exhibit.

<sup>49</sup> A 10/8/08 letter, drafted by Dan Castrellon and signed by Mark DePlasco, includes: "...the documents contained in the Record of Investigation (ROI) for which you have received were the only materials relied upon to support the proposed adverse action..."(sic). This letter was a denial of the grievance I had filed on 8/23/08, calling for removal of a memo in the ROI exhibits, as it had not been shared with me in a timely manner.



email to Dan Castellon (with a cc to Jason Ralph), which said: *"J. Lewis' Time card for Pay Period 5 has been amended. Sick Leave (code 02) for 2/16/2007 changed to Excused other leave (code 09). The time card will be approved Next Thursday. (Amendment Approval cutoff time today was @ 2pm PST). I will advise you next week when approval complete."* A week later, Patricia Hardy emailed that her access to pay records had been restricted, and she asked for assistance. Jason Ralph emailed Patricia Hardy (with cc's to Dan Castellon and Mark DePlasco) at 6:32PM on Sunday October 5<sup>th</sup>, saying: *"I will approve in the morning."* And, he did. Jason Ralph reported the amendment complete with his email, sent at 4:52PM on October 6<sup>th</sup>.<sup>50</sup>

#### **After the firing, slandered again by Agency Counsel**

92. The removal was effective November 6<sup>th</sup>, and I filed an Appeal with the Merit Systems Protection Board ("MSPB") on November 30<sup>th</sup>. A hearing date was quickly scheduled for March 4, 2009. MSPB Discovery was initiated, but Agency delayed producing records until just two weeks prior to the hearing date. Furthermore, the documents Agency then produced were clearly missing many key records, some declared redacted, while many others were not even declared. Later, via FOIA, I learned of the many exculpatory records they had removed from the Discovery package.
93. From this MSPB Appeal process, I learned that MSPB puts great pressure on both parties to settle. Up until mid-February, Agency Counsel was repeatedly offering me a Disability Retirement; they even provided a disability retirement estimate calculated

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<sup>50</sup> Agency concealed this email for 27-months. Although Ralph, Hardy and Castellon were making this pay amendment 600-days later, they never advised me that they were doing so. I became aware of this only after researching a suspiciously large paycheck received in November 2008.

on February 9, 2009. I repeatedly rejected the offer. I was not eligible for a disability, as my ATC medical clearance had been fully restored by Dr. Stephen Goodman on January 10, 2008.

94. On February 20<sup>th</sup>, at 1:34PM, Agency Counsel Naomi Tsuda sent an email to all the ATO officials relevant to the MSPB Appeal, including Mark DePlasco, Andy Richards, Monique France and others. [Exhibit-33] She noted the hearing was still set to happen on March 4<sup>th</sup>. She also mentioned that Monique France had suggested a new approach toward settlement. Numerous Agency records, obtained mostly via FOIA, indicate that this “new” settlement idea was simply: if I withdrew my MSPB Appeal and agreed to “voluntarily” retire, they would cancel my removal and let me retire. Agency personnel created a regular retirement estimate for me on February 24<sup>th</sup>.
95. Within her February 20<sup>th</sup> email, Naomi Tsuda had a sentence describing how she expressed safety concerns to the MSPB judge. She wrote: “...*we have made the AJ aware of our significant security concerns, and he says the MSPB is amply prepared to ensure security, and will do so.*”
96. At 7:55PM on February 24<sup>th</sup>, less than eight days before the hearing, Naomi Tsuda sent another email to all the relevant ATO officials. [Exhibit-34] She again addressed the security issue with: “...*also, due to security and safety concerns, I am working on getting a courtroom in San Francisco that will have a fully-operational metal detector and armed US Marshals available....*” The astonishing part of this clear slander is that, in my entire life, I have no personal or legal history to justify an FAA attorney asserting these wild concerns to an MSPB Judge.

97. On May 12, 2010, EEOC Counselor Pedro Oliveras had a phone interview with Andy Richards. One comment was: *“Mr. Lewis underwent a psychological evaluation due to his violent behavior and danger to himself.”* This is more slander. I was ordered to get a psychological evaluation in a punitive overreach of authority. There has never been anything in my medical files even suggesting any ‘danger to self’.

### **The lengthy involvement of Dick Fossier**

98. Dick Fossier was the key AWP Labor Relations Specialist in charge of my disciplinary action for the first 14-months, from February 2007 until early April 2008. His actions included:
- a. He attended the Violence in the Workplace (ViWP) Teleconference in the hour after I was locked out, on February 16, 2007.<sup>51</sup> [Exhibit-3]
  - b. He assisted AWP EAP Manager Cindy Lopez-Hickson in the coordination and drafting of two letters issued by Concord ATCT Manager Jason Ralph. The first letter initiated the lockout; [Exhibit-35] the second letter ordered me to get a medical evaluation at my own expense.<sup>52</sup> [Exhibit-36]
  - c. He coordinated with Andrew Robinson (at the FAA HQ Accountability Board [AB] office) and Vicki Hendrickson (at the FAA’s Western Service Center offices in Renton, WA) to arrange the FAA Security Investigation in late March 2007, resulting in the 93-page Record of Investigation (ROI).

<sup>51</sup> I knew nothing about this teleconference. My first clear evidence that it had happened and was relevant to my case came on October 10, 2007, when I received a FOIA copy of the ROI. I did not learn what Jason Ralph had said during the ViWP until March 15, 2010, when I received a FOIA Appeal copy of Cindy Lopez-Hickson’s detailed notes. These exculpatory notes should have been an ROI exhibit, but they were left out.

<sup>52</sup> Emails show these two letters were coordinated with AWP legal and medical authorities. The directive to obtain a medical evaluation was ethically improper as well as noncompliant with FAA procedures and both versions of the FAA-NATCA contract.

- d. He coordinated with, and eventually concurred with, Concord ATCT Manager Jason Ralph's proposal to place me into enforced leave, starting in mid-April 2007. This compelled me to burn off all of my sick leave and annual leave, and then enter into a six-week period of leave without pay (LWOP). This was the Constructive Suspension.
- e. On May 9, 2007, he sent an email to a group of eleven officials.<sup>53</sup> [Exhibit-37] It said: "...Jason, Barry & I talked today and discussed where we are going on this case. Steve – did Dr. Haldeman contact you? If so, is there anything you can share with the group?<sup>54</sup> ... some of the issues I see is that, with almost twenty years of Federal service, Lewis has no disciplinary record.<sup>55</sup> ... my suggestion is that if Aerospace Medicine opts to reinstate Lewis and return his medical, the LOB and 16 need to decide our next move.<sup>56</sup> Just a piece of information, after we had a violence in the workplace meeting on February 16, Medical pulled Lewis' medical and he was on Admin Leave for two months; on April 17, he started on Sick Leave where he remains. He has 501 hours of SL and 46 hours of AL on the books. Thanks all – dick".
- f. He initiated the "Justin" pseudonym and associated slanders (see below).<sup>57</sup>

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<sup>53</sup> The email recipients included Dr. Stephen Goodman, with cc's to Terry Bristol, Barry Davis, Tony DiBernardo, Dennis Sullivan, Jason Ralph, Gwen Marshall, Cindy Lopez-Hickson, Richard Giles, James Austin and Dr. Stephen Roberts.

<sup>54</sup> I find this phrase "the group," a bit troubling.

<sup>55</sup> This is one of a few times where Dick Fossier raised factual concerns in his emails, which others failed to act on. He also had a series of emails on June 13, 2007, wherein Dr. Stephen Goodman dodges the fact that I was never properly notified of the medical incapacitation in February 2007.

<sup>56</sup> "LOB" refers to Air Traffic (both WSA-Terminal, and the San Francisco District). "16" refers to AWP-16, the numerical identification of AWP-LR, where Fossier works.

<sup>57</sup> The Justin pseudonym appears in Agency emails dated 6/2/07, 6/13/07 and 9/14/07. It also appears in the Watch Items, from early October 2007 until mid-June 2008.

- g. On July 6, 2007, he received an email from Dr. Stephen Goodman which read: "*The subject has acknowledged his medical disqualification. He has requested information from AWP-300 that we have not responded to. His file is on my desk if you need to see it. I will be out of the office from 7/9 thru 7/12.*" This was an illegal invitation to view my confidential medical file, improperly left out on a desktop, yet Dick Fossier took no corrective action; instead, he forwarded this email to Barry Davis, Dennis Sullivan and Jason Ralph on July 8<sup>th</sup>. Agency has produced no evidence that any of these officials reported this breach of medical records confidentiality.
- h. In his July 14, 2007 email to Barry Davis, Dennis Sullivan, Jason Ralph and others, he clearly advocated that I should be "...*counseled, admonished and/or reprimanded...*" for the alleged misconduct. On July 16, 2007, he received email copies of Jason Ralph's first draft admonishment letter. Agency records obtained via FOIA show his participation while this letter evolved. The fifth version was signed and mailed by Dennis Sullivan.<sup>58</sup>
- i. On September 5, 2007, in another widely-distributed email, he informed Richard Giles (AWP manager in charge of internal investigations) that "...*Lewis was admonished ... (and) on the basis of this, we closed the Accountability Board case. Based on this, I would say it is OK to provide Lewis a copy of his redacted ROI. ... As an aside, we are pursuing the removal of Mr. Lewis based on the permanent loss of his medical. Lewis has appealed this; I just talked to AWP-300,<sup>59</sup> and they have not heard back from Federal Air Surgeon re the Lewis appeal.*" This email included

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<sup>58</sup> I received this admonishment letter on July 31, 2007.

<sup>59</sup> AWP-300 is the numeric identification for the AWP Regional Flight Surgeon's office.



a lengthy string of emails showing the entire evolution of the admonishment letter from, July 16, 2007 onward.<sup>60</sup>

- j. On or around October 1, 2007, Dick Fossier initiated a Watch Item in which I was listed as “**CCR – Lewis, Justin – AWOL – pending medical revocation.**”
- k. In mid-October 2007, Dick Fossier coordinated with Dr. Stephen Goodman, who was trying to sustain the medical disqualification he had issued against me on June 22<sup>nd</sup>. This disqualification was overturned by the Federal Air Surgeon, and Dr. Stephen Goodman was ordered to fully restore my ATC medical clearance, which he did on January 10, 2008.
- l. During February 2008, Dick Fossier was conferring with Patricia Hardy and Andy Richards.<sup>61</sup> Included was a February 13<sup>th</sup> email in which he wrote: “...*I do want to chat with you (and Pat) as to where/how we are moving on Lewis. PLEASE call me – THANKS – dick...*”
- m. Two months later, my case was reassigned to Ros Marable. To brief Ros Marable, Dick Fossier sent an April 5<sup>th</sup> email in which he slandered me with: “...*this ‘Slime Ball’ has been with the Agency for 20 plus years and has **never certified** at a facility...*” (NOTE: bold emphasis in original, by Fossier). This is false. In fact, I had been fully certified for most of my ATC career, at four different towers; I also had been functionally certified for years, fully operational and serving as an oceanic controller at Oakland Center.<sup>62</sup>

<sup>60</sup> This email and the string of attachments was concealed by Agency Counsel during MSPB Discovery. I did not obtain the entire string until December 2009, nine months after the MSPB Appeal process ended.

<sup>61</sup> Patricia Hardy became acting CCR manager, after Jason Ralph had been promoted to SFO. Andy Richards replaced Dennis Sullivan as District Manager, in August 2007.

<sup>62</sup> While I was at Oakland, all Oceanic controllers were subjected to years of training delays, waiting for training classes. They were awarded tens of thousands of dollars in bonus pay, once they radar-certified.

- n. In numerous emails sent in May and June 2008, Glen Rotella requested Dick Fossier to clarify background on my case.<sup>63</sup>
- o. I had a long phone conversation with Dick Fossier on Monday, August 8, 2008. I followed up with a detailed letter the next day.<sup>64</sup> [Exhibit-38] My letter included some questions, and I also asked him to advise any parts of the letter that were incorrect. Dick Fossier never replied.<sup>65</sup>

### **Eight months of Justin-AWOL slander**

- 99. For the eight months prior to Monique France's June 30, 2008 email concurring with the proposal to fire me, AWP-LR was misrepresenting my case in the Watch Item section of the Terminal Reports as: "***CCR – Lewis, Justin – AWOL – Pending medical revocation with Aerospace Medicine.***" [Exhibit-39]
- 100. The facts are quite the opposite.<sup>66</sup> First, I was never AWOL in my entire 22-year ATC career. Second, my ATC medical clearance (which never would have been revoked, if not for the illegal and improper actions in early 2007) was fully restored by AWP Regional Flight Surgeon Dr. Stephen Goodman<sup>67</sup> on January 10, 2008 – which is more than five months prior to the cessation of the Watch Item slander.

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<sup>63</sup> In one clear example, an email sent at 10:11AM on 6/3/08, Glen wrote: "...again this case leads me to your knowledge and involvement ... I am having a difficult time with this and the FLRA is on my back as the response is part of a settlement. Also, Mr. Lewis is still on admin. leave and he has been for more than a year. The facility and Hub say they are waiting for HR to put a proposal together. I know Ros has been working on it and they have changed their minds several times. If we are not pro-active HR is going to get the blame for the lack of active. I believe we need a Telecon to set the record, get the grievance response done, and get the discipline process on track."

<sup>64</sup> The questions focused on Dick Fossier's involvement in the case, especially at the start in February 2007. I attached some of my notes from late-January to mid-February 2007.

<sup>65</sup> I did confirm he received the letter, though. On 9/1/2010, I received a 420-page Privacy Act response, and it included a copy of this letter.

<sup>66</sup> And, for the record, I have never used "Justin" or anything like it as a nickname.

<sup>67</sup> In his 4/5/08 email to Ros Marable, Dick Fossier notes Dr. Goodman was ORDERED by his boss.

101. The use of the “Justin Lewis” pseudonym effectively concealed this slander for years.

I did not find evidence implying the Justin-AWOL Watch Item until December 2010, and did not obtain proof and Agency acknowledgment of this misrepresentation until January 2011.

102. Dick Fossier had made references to both “Justin” and “AWOL” in some of his emails. For example, in a May 10, 2007 email to AB’s Andrew Robinson, he stated:

*“...we were going to place him on AWOL but opted to put him on sick leave...”* In numerous emails (on 6/2/07, 6/13/07, and 9/14/07) he refers to me as “Justin”.<sup>68</sup>

103. An additional effect of the “Justin” pseudonym was that it concealed this situation from FAA auditing officials. Thus, the Agency was not able to control against the extraordinary waste of the arbitrary lockout of an employee, who remained mostly in a paid status for 21-months.

104. At the same time, though, there were MANY who clearly knew this was a pseudonym. The bi-weekly Terminal Reports were widely distributed within AWP-LR, as well as to the two WSA-Terminal “worker-bees”, Barry Davis and Monique France. There were also many Terminal Reports listing me as Justin on one page, and Jeffrey on another page.<sup>69</sup> To coordinate between AWP-LR and ATO, there had to have been regular meetings and teleconferences. If anyone ever spoke up, nothing was done about it for eight months. And, if no one ever spoke up, what does that say about the diligence practiced in an office that aids in the firing of personnel?

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<sup>68</sup> In one particular email, sent at 9:40AM on 6/13/07, Fossier referred to me as “Justin” twice, then as “Jeff” once, then again as “Justin” two more times. This email was shared with Dr. Goodman, Dr. Roberts, Barry Davis, Dennis Sullivan, Jason Ralph, Cindy Lopez-Hickson, and Gwen Marshall; all members of this ‘group’ were clearly aware that the “Justin” pseudonym referred to Jeff Lewis at tiny Concord ATCT.

<sup>69</sup> One example: in the May 20, 2008 Terminal Report, I was listed as “Jeffrey” in the C&D, Grievance, and ULP sections, and “Justin” on the Watch Items page.

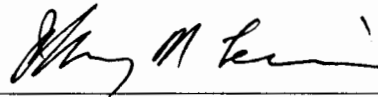
**CONCLUSION:**

A vast collection of Agency records offers compelling evidence that FAA officials retaliated against me in May 2008, after I had filed a grievance. Through the use of FOIA, as Congress had intended, I have thus far been able to uncover some FAA records that reveal how specific FAA officials handled my case. Unfortunately, Defendant FAA continues to improperly conceal some of the most critical records.

Much more can be learned about the inner workings of this Agency, if these records are produced. Doing so will also aid FAA in identifying overdue reforms and lost efficiencies.

The Court's assistance is needed, to compel production of these last records.

Respectfully submitted this 2<sup>nd</sup> day of July 2012.

A handwritten signature in black ink, appearing to read "Jeffrey N. Lewis", written over a horizontal line.

Jeffrey Nathan Lewis,  
Plaintiff, *pro se*